

**REMARKS**

The Official Action mailed March 4, 2009, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Also, filed concurrently herewith is a *Request for Continued Examination*. Accordingly, the Applicant respectfully submits that this response is being timely filed.

The Applicant notes with appreciation the consideration of the Information Disclosure Statements filed on August 25, 2006; October 6, 2006; November 5, 2008.

The Applicant notes the *partial* consideration of the Information Disclosure Statement filed on December 1, 2008 (received by OIPE December 3, 2008). Specifically, it appears that the Examiner has lined through the citation of "International Search Report (Application No. PCT/JP2004/018079 dated April 5, 2005)" and "Written Opinion (Application No. PCT/JP2004/018079 dated April 5, 2005)." The Applicant notes that each of these citations includes "Full" in column T<sup>2</sup> indicating that a full English translation of the cited references is being provided to the Office. The Official Action incorrectly asserts that these citations are "Duplicate Citation (see form filed Aug. 25, 2006)." However, as the Applicant noted in the Information Disclosure Statement filed on December 1, 2008, only a partial translation of the International Search Report and Written Opinion were previously submitted with the Information Disclosure Statement filed August 25, 2006. A full English translation of these documents was submitted in the IDS filed on December 1, 2008; thus, the citations are not duplicates. In order to clarify that the Examiner has, indeed, fully considered the full translations of the above-referenced documents, the Applicant respectfully requests that the Examiner provide an initialed copy of the Form PTO-1449 from the IDS filed December 1, 2008, without the use of strikethrough.

A further Information Disclosure Statement is submitted herewith and consideration of this Information Disclosure Statement is respectfully requested.

Claims 50-70 were pending in the present application prior to the above amendment. Claims 50, 59 and 68 have been amended to better recite the features of the present invention, and new claims 71-74 have been added to recite additional protection to which the Applicant is entitled. Accordingly, claims 50-74 are now pending in the present application, of which claims 50, 59, 68 and 71-74 are independent. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

Paragraph 4 of the Official Action rejects claims 50-70 under 35 U.S.C. § 112, first paragraph, "as failing to comply with the written description requirement" (Paper No. 20090301, Page 2). The Applicant respectfully disagrees and traverses the above assertion in the Official Action.

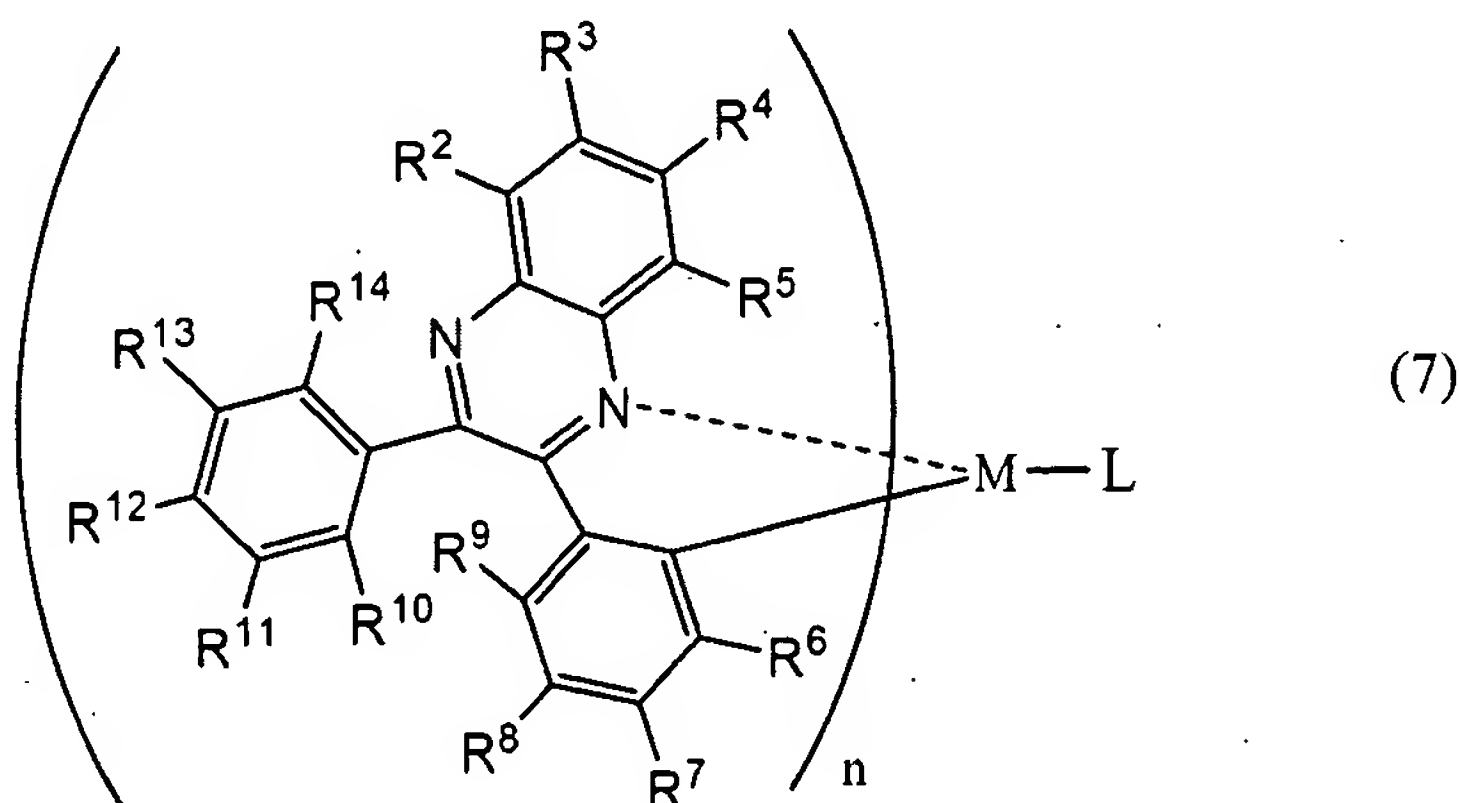
A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. In re Marzocchi, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). Therefore, the examiner must have a reasonable basis to challenge the adequacy of the written description and has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. In rejecting a claim, the examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. See MPEP § 2163.

Claims 50 and 59 have been amended to recite that each of  $R^2$  to  $R^5$ ,  $R^7$ ,  $R^9$ ,  $R^{10}$ ,  $R^{12}$ , and  $R^{14}$  is hydrogen, each of  $R^6$ ,  $R^8$ ,  $R^{11}$ , and  $R^{13}$  is any one selected from the group consisting of a hydrogen, a halogen element, an acyl group, an alkyl group, an alkoxyl group, an aryl group, a cyano group, a heterocyclic group, and an electron-withdrawing group, and that at least one of  $R^6$  and  $R^8$  is an electron-withdrawing group. Claim 68 has been amended to recite that M is an element of Group 9 and to delete references to various R substituents. For the reasons provided below, the Applicant

respectfully submits that amended claims 50, 59 and 68, when read in light of the specification, are adequately described and supported in the specification.

With respect to claims 50-67, the Official Action asserts that "[t]he presently required substitution pattern is not explicitly disclosed in the application as originally filed, and no specific examples of organometallic complexes within the scope of the present claims are set forth in the original disclosure" (Paper No. 20090301, Page 3). The Applicant respectfully disagrees and traverses this assertion. It is respectfully submitted that independent claims 50 and 59, both prior and according to the present amendment, are supported in the specification as originally filed, at least by paragraphs [0036]-[0037], which disclose the following:

One of organometallic complexes according to the present invention is an organometallic complex represented by the following general formula (7).



In the formula (7),  $R^2$  to  $R^{14}$  are individually any one selected from the group consisting of hydrogen, a halogen element, an acyl group, an alkyl group, an alkoxyl group, an aryl group, a cyano group, a heterocyclic group, and an electron-withdrawing group, M is one of an element of Group 9 and an element of Group 10,  $n = 2$  when the M is the element of Group 9 while  $n = 1$  when the M is the element of Group 10, and L is an anionic ligand. Here, it is preferable that at least one of  $R^6$  to  $R^9$  be an electron-withdrawing group. This makes it possible to emit phosphorescence with larger emission intensity.

In disclosing that " $R^2$  to  $R^{14}$  are individually any one selected from the group consisting of hydrogen, a halogen element, an acyl group, an alkyl group, an alkoxyl

group, an aryl group, a cyano group, a heterocyclic group, and an electron-withdrawing group," the present inventors have provided a written description sufficient to enable one of ordinary skill in the art to practice the present invention, including that recited in claims 50-67. Namely, one of ordinary skill in the art would understand that the present invention includes any and all possible combinations of  $R^2$  to  $R^{14}$  and that each of  $R^2$  to  $R^{14}$  may be any of the subsequently recited group of elements and groups.

Furthermore, formulae 67 and 72 disclose specific examples where each of  $R^2$  to  $R^5$ ,  $R^7$ ,  $R^9$ ,  $R^{10}$ ,  $R^{12}$ , and  $R^{14}$  is hydrogen and where each of  $R^6$ ,  $R^8$ ,  $R^{11}$ , and  $R^{13}$  is any one selected from the group consisting of a hydrogen, a halogen element, an acyl group, an alkyl group, an alkoxyl group, an aryl group, a cyano group, a heterocyclic group, and an electron-withdrawing group, in this case, fluorine. As such, claims 50-67 clearly comply with the written description requirement.

With respect to claims 68-70, the Official Action asserts that "[t]he metal of the organometallic complex defined by claims 68 and 69, and required for the device of claim 70, is not defined" and that "[t]he application as originally filed disclosed two specific examples of iridium complexes having the formula shown in claim 68 (see paragraphs [0260]-[0284] on pages 80-87 in particular), but it is the examiner's position that the two disclosed iridium complexes do not provide sufficient support for the full scope of metal complexes encompassed by claims 68 and 69, and required for the device of claim 70" (Paper No. 20090301, Page 3). The Applicant respectfully disagrees and traverses the above assertions in the Official Action.

As noted above, claim 68 has been amended to recite that M is an element of Group 9. As the Official Action appears to appreciate, the specification discloses "specific examples of iridium complexes having the formula shown in claim 68." Additionally, the Applicant respectfully submits that independent claim 68, as amended, is supported in the original specification, at least by paragraph [0056], which states the following: "specific examples of the element of Group 9 or the element of Group 10 include iridium and platinum. However, the element of Group 9 or the element of Group

10 is not to be considered limited to these elements given as examples." As such, the Applicant respectfully submits that the specification contains sufficient support for the full scope of metal complexes encompassed by claims 68 and 69, and required for the device of claim 70. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, first paragraph, are in order and respectfully requested.

Paragraph 5 of the Official Action rejects claims 68-70 under 35 U.S.C. § 112, second paragraph, asserting that the claims are "indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." Specifically, the Official Action asserts that "[c]laims 68-70 are indefinite because M of the formula set forth in claim 68 is not defined" and "because claim 68 provides definitions for various R variables, but there are no R variables in the formula in claim 68" (Paper No. 20090301, Page 4).

In response and as noted above, the Applicant has amended independent claim 68 to recite wherein M is an element of Group 9 and to delete references to various R substituents. The Applicant respectfully submits that claims 68-70 particularly point out and distinctly claim the subject matter which applicant regards as the invention and are definite. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph, are in order and respectfully requested.

New claims 71-74 have been added to recite additional protection to which the Applicant is entitled. For the reasons stated above and already of record, the Applicant respectfully submits that new claims 71-74 are in condition for allowance.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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